

Calendar No. 506108TH CONGRESS
2^D SESSION**S. 2403**

To authorize appropriations for fiscal year 2005 for defense activities of the Department of Energy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 11, 2004

Mr. WARNER, from the Committee on Armed Services, reported the following original bill; which was read twice and placed on the calendar

A BILL

To authorize appropriations for fiscal year 2005 for defense activities of the Department of Energy, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Department of Energy
5 National Security Act for Fiscal Year 2005”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Congressional defense committees defined.

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

Subtitle A—National Security Programs Authorizations

- Sec. 3101. National Nuclear Security Administration.
- Sec. 3102. Defense environmental management.
- Sec. 3103. Other defense activities.
- Sec. 3104. Defense nuclear waste disposal.

Subtitle B—Program Authorizations, Restrictions, and Limitations

- Sec. 3111. Limitation on availability of funds for Modern Pit Facility.
- Sec. 3112. Limitation on availability of funds for Advanced Nuclear Weapons Concepts Initiative.
- Sec. 3113. Limited authority to carry out new projects under Facilities and Infrastructure Recapitalization Program after project selection deadline.
- Sec. 3114. Modification of milestone and report requirements for National Ignition Facility.
- Sec. 3115. Modification of submittal date of annual plan for stewardship, management, and certification of warheads in the nuclear weapons stockpile.
- Sec. 3116. Defense site acceleration completion.
- Sec. 3117. Annual report on expenditures for safeguards and security.
- Sec. 3118. Authority to consolidate counterintelligence offices of Department of Energy and National Nuclear Security Administration within National Nuclear Security Administration.
- Sec. 3119. Treatment of disposition waste from reprocessing of low-level or transuranic waste.
- Sec. 3120. Local stakeholder organizations for Department of Energy environmental management 2006 closure sites.
- Sec. 3121. Report on maintenance of retirement benefits for certain workers at 2006 closure sites after closure of sites.

Subtitle C—Proliferation Matters

- Sec. 3131. Modification of authority to use international nuclear materials protection and cooperation program funds outside the former Soviet Union.

Subtitle D—Other Matters

- Sec. 3141. Indemnification of Department of Energy contractors.
- Sec. 3142. Two-year extension of authority for appointment of certain scientific, engineering, and technical personnel.
- Sec. 3143. Enhancement of Energy Employees Occupational Illness Compensation Program authorities.
- Sec. 3144. Support for public education in the vicinity of Los Alamos National Laboratory, New Mexico.
- Sec. 3145. Review of Waste Isolation Pilot Plant, New Mexico, pursuant to competitive contract.

Sec. 3146. Compensation of Pajarito Plateau, New Mexico, homesteaders for acquisition of lands for Manhattan Project in World War II.

TITLE XXXII—DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sec. 3201. Authorization.

TITLE XXXIII—NATIONAL DEFENSE STOCKPILE

Sec. 3301. Disposal of ferromanganese.

Sec. 3302. Revisions to required receipt objectives for certain previously authorized disposals from the National Defense Stockpile.

1 SEC. 3. CONGRESSIONAL DEFENSE COMMITTEES DEFINED.

2 For purposes of this Act, the term “congressional de-
3 fense committees” means—

4 (1) the Committee on Armed Services and the
5 Committee on Appropriations of the Senate; and

6 (2) the Committee on Armed Services and the
7 Committee on Appropriations of the House of Rep-
8 resentatives.

9 **TITLE XXXI—DEPARTMENT OF**
10 **ENERGY NATIONAL SECURITY**
11 **PROGRAMS**

12 **Subtitle A—National Security**
13 **Programs Authorizations**

14 **SEC. 3101. NATIONAL NUCLEAR SECURITY ADMINISTRA-**
15 **TION.**

16 (a) **AUTHORIZATION OF APPROPRIATIONS.**—Funds
17 are hereby authorized to be appropriated to the Depart-
18 ment of Energy for fiscal year 2005 for the activities of
19 the National Nuclear Security Administration in carrying

1 out programs necessary for national security in the
2 amount of \$9,165,145,000, to be allocated as follows:

3 (1) For weapons activities, \$6,674,898,000.

4 (2) For defense nuclear nonproliferation activi-
5 ties, \$1,348,647,000.

6 (3) For naval reactors, \$797,900,000.

7 (4) For the Office of the Administrator for Nu-
8 clear Security, \$343,700,000.

9 (b) AUTHORIZATION OF NEW PLANT PROJECTS.—

10 From funds referred to in subsection (a) that are available
11 for carrying out plant projects, the Secretary of Energy
12 may carry out new plant projects for weapons activities,
13 as follows:

14 (1) For readiness in technical base and facili-
15 ties:

16 Project 05–D–140, Readiness in Technical
17 Base and Facilities Program (RTBF), project
18 engineering and design (PED), various loca-
19 tions, \$11,600,000.

20 Project 05–D–401, Building 12–64 pro-
21 duction bays upgrade, Pantex Plant, Amarillo,
22 Texas, \$25,000,000.

23 Project 05–D–402, Beryllium Capability
24 (BeC) Project, Y–12 National Security Com-
25 plex, Oak Ridge, Tennessee, \$3,627,000.

1 (2) For facilities and infrastructure recapital-
2 ization:

3 Project 05–D–160, Facilities and Infra-
4 structure Recapitalization Program (FIRP),
5 project engineering and design (PED), various
6 locations, \$8,700,000.

7 Project 05–D–601, compressed air up-
8 grades, Y–12 National Security Complex, Oak
9 Ridge, Tennessee, \$4,400,000.

10 Project 05–D–602, power grid infrastruc-
11 ture upgrade (PGIU), Los Alamos National
12 Laboratory, Los Alamos, New Mexico,
13 \$10,000,000.

14 Project 05–D–603, new master substation,
15 technical areas I and IV, Sandia National Lab-
16 oratories, Albuquerque, New Mexico, \$600,000.

17 (3) For safeguards and security:

18 Project 05–D–170, safeguards and secu-
19 rity, project engineering and design (PED),
20 various locations, \$17,000,000.

21 Project 05–D–701, security perimeter, Los
22 Alamos National Laboratory, Los Alamos, New
23 Mexico, \$20,000,000.

24 (4) For naval reactors:

1 Project 05–N–900, materials development
2 facility building, Schenectady, New York,
3 \$6,200,000.

4 **SEC. 3102. DEFENSE ENVIRONMENTAL MANAGEMENT.**

5 (a) AUTHORIZATION OF APPROPRIATIONS.—Funds
6 are hereby authorized to be appropriated to the Depart-
7 ment of Energy for fiscal year 2005 for environmental
8 management activities in carrying out programs necessary
9 for national security in the amount of \$6,954,402,000, to
10 be allocated as follows:

11 (1) For defense site acceleration completion,
12 \$5,971,932,000.

13 (2) For defense environmental services,
14 \$982,470,000.

15 (b) AUTHORIZATION OF NEW PLANT PROJECT.—
16 From funds referred to in subsection (a)(2) that are avail-
17 able for carrying out plant projects, the Secretary of En-
18 ergy may carry out, for environmental management activi-
19 ties, the following new plant project:

20 Project 05–D–405, salt waste processing facil-
21 ity, Savannah River Site, Aiken, South Carolina,
22 \$52,000,000.

23 **SEC. 3103. OTHER DEFENSE ACTIVITIES.**

24 Funds are hereby authorized to be appropriated to
25 the Department of Energy for fiscal year 2005 for other

1 defense activities in carrying out programs necessary for
2 national security in the amount of \$568,096,000.

3 **SEC. 3104. DEFENSE NUCLEAR WASTE DISPOSAL.**

4 Funds are hereby authorized to be appropriated to
5 the Department of Energy for fiscal year 2005 for defense
6 nuclear waste disposal for payment to the Nuclear Waste
7 Fund established in section 302(c) of the Nuclear Waste
8 Policy Act of 1982 (42 U.S.C. 10222(c)) in the amount
9 of \$108,000,000.

10 **Subtitle B—Program Authoriza-**
11 **tions, Restrictions, and Limita-**
12 **tions**

13 **SEC. 3111. LIMITATION ON AVAILABILITY OF FUNDS FOR**
14 **MODERN PIT FACILITY.**

15 (a) **LIMITATION.**—Of the amount authorized to be
16 appropriated by section 3101(a)(1) for the National Nu-
17 clear Security Administration for weapons activities and
18 available for the Modern Pit Facility, not more than 50
19 percent of such amount may be obligated or expended
20 until 30 days after the latter of the following:

21 (1) The date of the submittal of the revised nu-
22 clear weapons stockpile plan specified in the joint ex-
23 planatory statement to accompany the report of the
24 Committee on Conference on the bill H.R. 2754 of
25 the 108th Congress.

1 (2) The date on which the Administrator for
2 Nuclear Security submits to the congressional de-
3 fense committees a report setting forth the validated
4 pit production requirements for the Modern Pit Fa-
5 cility.

6 (b) VALIDATED PIT PRODUCTION REQUIREMENTS.—

7 (1) The validated pit production requirements in the re-
8 port under subsection (a)(2) shall be established by the
9 Administrator in conjunction with the Chairman of the
10 Nuclear Weapons Council.

11 (2) The validated pit production requirements shall—

12 (A) include specifications regarding the number
13 of pits that will be required to be produced in order
14 to support the weapons that will be retained in the
15 nuclear weapons stockpile, set forth by weapon type
16 and by year; and

17 (B) take into account any surge capacity that
18 may be included in the annual pit production capa-
19 bility.

20 (c) FORM OF REPORT.—The report described in sub-
21 section (a)(2) shall be submitted in unclassified form, but
22 may include a classified annex.

1 **SEC. 3112. LIMITATION ON AVAILABILITY OF FUNDS FOR**
2 **ADVANCED NUCLEAR WEAPONS CONCEPTS**
3 **INITIATIVE.**

4 (a) **LIMITATION.**—None of the funds authorized to
5 be appropriated by this title may be obligated or expended
6 for purposes of additional or exploratory studies under the
7 Advanced Nuclear Weapons Concepts Initiative until 30
8 days after the date on which the Administrator for Nu-
9 clear Security submits to the congressional defense com-
10 mittees a detailed report on the activities for such studies
11 under the Initiative that are planned for fiscal year 2005.

12 (b) **FORM OF REPORT.**—The report under subsection
13 (a) shall be submitted in unclassified form, but may in-
14 clude a classified annex.

15 **SEC. 3113. LIMITED AUTHORITY TO CARRY OUT NEW**
16 **PROJECTS UNDER FACILITIES AND INFRA-**
17 **STRUCTURE RECAPITALIZATION PROGRAM**
18 **AFTER PROJECT SELECTION DEADLINE.**

19 (a) **LIMITED AUTHORITY TO CARRY OUT NEW**
20 **PROJECTS.**—Section 3114(a) of the National Defense Au-
21 thorization Act for Fiscal Year 2004 (Public Law 108–
22 136; 117 Stat. 1744; 50 U.S.C. 2453 note) is amended—

23 (1) in the subsection caption, by striking
24 “DEADLINE FOR”;

1 (2) in paragraph (2), by striking “No project”
2 and inserting “Except as provided in paragraph (3),
3 no project”; and

4 (3) by adding at the end the following new
5 paragraph:

6 “(3)(A) Subject to the provisions of this paragraph,
7 a project described in subparagraph (B) may be carried
8 out under the Facilities and Infrastructure Recapitaliza-
9 tion Program after December 31, 2004, if the Adminis-
10 trator approves the project. The Administrator may not
11 delegate the authority to approve projects under the pre-
12 ceding sentence.

13 “(B) A project described in this subparagraph is a
14 project that consists of a specific building, facility, or
15 other improvement (including fences, roads, or similar im-
16 provements).

17 “(C) Funds may not be obligated or expended for a
18 project under this paragraph until 60 days after the date
19 on which the Administrator submits to the congressional
20 defense committees a notice on the project, including a
21 description of the project and the nature of the project,
22 a statement explaining why the project was not included
23 in the Facilities and Infrastructure Recapitalization Pro-
24 gram under paragraph (1), and a statement explaining

1 why the project was not included in any other program
2 under the jurisdiction of the Administrator.

3 “(D) The total number of projects that may be car-
4 ried out under this paragraph in any fiscal year may not
5 exceed five projects.

6 “(E) The Administrator may not utilize the authority
7 in this paragraph until 60 days after the later of—

8 “(i) the date of the submittal to the congres-
9 sional defense committees of a list of the projects se-
10 lected for inclusion in the Facilities and Infrastruc-
11 ture Recapitalization Program under paragraph (1);
12 or

13 “(ii) the date of the submittal to the congres-
14 sional defense committees of the report required by
15 subsection (c).

16 “(F) A project may not be carried out under this
17 paragraph unless the project will be completed by Sep-
18 tember 30, 2011.”

19 (b) CONSTRUCTION OF AUTHORITY.—The amend-
20 ments made by subsection (a) may not be construed to
21 authorize any delay in either of the following:

22 (1) The selection of projects for inclusion in the
23 Facilities and Infrastructure Recapitalization Pro-
24 gram under subsection (a) of section 3114 of the

1 National Defense Authorization Act for Fiscal Year
2 2004.

3 (2) The submittal of the report required by sub-
4 section (c) of such section.

5 **SEC. 3114. MODIFICATION OF MILESTONE AND REPORT RE-**
6 **QUIREMENTS FOR NATIONAL IGNITION FA-**
7 **CILITY.**

8 (a) NOTIFICATION ON MILESTONES TO ACHIEVE IG-
9 NITION.—Subsection (a) of section 3137 of the National
10 Defense Authorization Act for Fiscal Year 2002 (Public
11 Law 107–107; 115 Stat. 1369) is amended by striking
12 “each Level I milestone and Level II milestone for the Na-
13 tional Ignition Facility.” and inserting the following:
14 “each milestone for the National Ignition Facility as fol-
15 lows:

16 “(1) Each Level I milestone.

17 “(2) Each Level II milestone.

18 “(3) Each milestone to achieve ignition.”.

19 (b) REPORT ON FAILURE OF TIMELY ACHIEVEMENT
20 OF MILESTONES.—Subsection (b) of such section is
21 amended by striking “a Level I milestone or Level II mile-
22 stone for the National Ignition Facility” and inserting “a
23 milestone for the National Ignition Facility referred to in
24 subsection (a)”.

1 (c) MILESTONES TO ACHIEVE IGNITION.—Sub-
2 section (c) of such section is amended to read as follows:

3 “(c) MILESTONES.—For purposes of this section:

4 “(1) The Level I and Level II milestones for
5 the National Ignition Facility are as established in
6 the August 2000 revised National Ignition Facility
7 baseline document.

8 “(2) The milestones of the National Ignition
9 Facility to achieve ignition are such milestones
10 (other than the milestones referred to in paragraph
11 (1)) as the Administrator shall establish on any ac-
12 tivities at the National Ignition Facility that are re-
13 quired to enable the National Ignition Facility to
14 achieve ignition and be a fully functioning user facil-
15 ity by December 31, 2011.”.

16 (d) SUBMITTAL TO CONGRESS OF MILESTONES TO
17 ACHIEVE IGNITION.—Not later than January 31, 2005,
18 the Administrator for Nuclear Security shall submit to the
19 congressional defense committees a report setting forth
20 the milestones of the National Ignition Facility to achieve
21 ignition as established by the Administration under sub-
22 section (c)(2) of section 3137 of the National Defense Au-
23 thorization Act for Fiscal Year 2002, as amended by sub-
24 section (c) of this section. The report shall include—

1 (1) a description of each milestone established;
2 and

3 (2) a proposal for the funding to be required to
4 meet each such milestone.

5 (e) EXTENSION OF SUNSET.—Subsection (d) of sec-
6 tion 3137 of such Act is amended by striking “September
7 30, 2004” and inserting “December 31, 2011”.

8 **SEC. 3115. MODIFICATION OF SUBMITTAL DATE OF ANNUAL**
9 **PLAN FOR STEWARDSHIP, MANAGEMENT,**
10 **AND CERTIFICATION OF WARHEADS IN THE**
11 **NUCLEAR WEAPONS STOCKPILE.**

12 Section 4203(c) of the Atomic Energy Defense Act
13 (50 U.S.C. 2523(c)) is amended is amended by striking
14 “March 15 of each year thereafter” and inserting “May
15 1 of each year thereafter”.

16 **SEC. 3116. DEFENSE SITE ACCELERATION COMPLETION.**

17 (a) IN GENERAL.—Notwithstanding any other provi-
18 sion of law, with respect to material stored at a Depart-
19 ment of Energy site at which activities are regulated by
20 the State pursuant to approved closure plans or permits
21 issued by the State, high-level radioactive waste does not
22 include radioactive material resulting from the reprocess-
23 ing of spent nuclear fuel that the Secretary of Energy de-
24 termines—

1 (1) does not require permanent isolation in a
2 deep geologic repository for spent fuel or highly ra-
3 dioactive waste pursuant to criteria promulgated by
4 the Department of Energy by rule in consultation
5 with the Nuclear Regulatory Commission;

6 (2) has had highly radioactive radionuclides re-
7 moved to the maximum extent practical in accord-
8 ance with the Nuclear Regulatory Commission-re-
9 viewed criteria; and

10 (3) in the case of material derived from the
11 storage tanks, is disposed of in a facility (including
12 a tank) within the State pursuant to a State-ap-
13 proved closure plan or a State-issued permit, author-
14 ity for the approval or issuance of which is conferred
15 on the State outside of this Act.

16 (b) INAPPLICABILITY TO CERTAIN MATERIALS.—
17 Subsection (a) shall not apply to any material otherwise
18 covered by that subsection that is transported from the
19 State.

20 (c) SCOPE OF AUTHORITY TO CARRY OUT AC-
21 TIONS.—The Department of Energy may implement any
22 action authorized—

23 (1) by a State-approved closure plan or State-
24 issued permit in existence on the date of enactment
25 of this section; or

1 (2) by a closure plan approved by the State or
2 a permit issued by the State during the pendency of
3 the rulemaking provided for in subsection (a).

4 Any such action may be completed pursuant to the terms
5 of the closure plan or the State-issued permit notwith-
6 standing the final criteria adopted by the rulemaking pur-
7 suant to subsection (a).

8 (d) STATE DEFINED.—In this section, the term
9 “State” means the State of South Carolina.

10 **SEC. 3117. ANNUAL REPORT ON EXPENDITURES FOR SAFE-**
11 **GUARDS AND SECURITY.**

12 (a) ANNUAL REPORT REQUIRED.—Subtitle C of title
13 XLVII of the Atomic Energy Defense Act (50 U.S.C.
14 2771 et seq.) is amended by adding at the end the fol-
15 lowing new section:

16 **“SEC. 4732. ANNUAL REPORT ON EXPENDITURES FOR SAFE-**
17 **GUARDS AND SECURITY.**

18 “The Secretary of Energy shall submit to Congress
19 each year, in the budget justification materials submitted
20 to Congress in support of the budget of the President for
21 the fiscal year beginning in such year (as submitted under
22 section 1105(a) of title 31, United States Code), the fol-
23 lowing:

24 “(1) A detailed description and accounting of
25 the proposed obligations and expenditures by the

1 Department of Energy for safeguards and security
2 in carrying out programs necessary for the national
3 security for the fiscal year covered by such budget,
4 including any technologies on safeguards and secu-
5 rity proposed to be deployed or implemented during
6 such fiscal year.

7 “(2) With respect to the fiscal year ending in
8 the year before the year in which such budget is sub-
9 mitted, a detailed description and accounting of—

10 “(A) the policy on safeguards and security,
11 including any modifications in such policy
12 adopted or implemented during such fiscal year;

13 “(B) any initiatives on safeguards and se-
14 curity in effect or implemented during such fis-
15 cal year;

16 “(C) the amount obligated and expended
17 for safeguards and security during such fiscal
18 year, set forth by total amount, by amount per
19 program, and by amount per facility; and

20 “(D) the technologies on safeguards and
21 security deployed or implemented during such
22 fiscal year.”.

23 (b) CLERICAL AMENDMENT.—The table of contents
24 for that Act is amended by inserting after the item relat-
25 ing to section 4731 the following new item:

“Sec. 4732. Annual report on expenditures for safeguards and security.”.

1 **SEC. 3118. AUTHORITY TO CONSOLIDATE COUNTERINTEL-**
2 **LIGENCE OFFICES OF DEPARTMENT OF EN-**
3 **ERGY AND NATIONAL NUCLEAR SECURITY**
4 **ADMINISTRATION WITHIN NATIONAL NU-**
5 **CLEAR SECURITY ADMINISTRATION.**

6 (a) **AUTHORITY.**—The Secretary of Energy may con-
7 solidate the counterintelligence programs and functions re-
8 ferred to in subsection (b) within the Office of Defense
9 Nuclear Counterintelligence of the National Nuclear Secu-
10 rity Administration and provide for their discharge by that
11 Office.

12 (b) **COVERED PROGRAMS AND FUNCTIONS.**—The
13 programs and functions referred to in this subsection are
14 as follows:

15 (1) The functions and programs of the Office of
16 Counterintelligence of the Department of Energy
17 under section 215 of the Department of Energy Or-
18 ganization Act (42 U.S.C. 7144b).

19 (2) The functions and programs of the Office of
20 Defense Nuclear Counterintelligence of the National
21 Nuclear Security Administration under section 3232
22 of the National Nuclear Security Administration Act
23 (50 U.S.C. 2422), including the counterintelligence
24 programs under section 3233 of that Act (50 U.S.C.
25 2423).

1 (c) ESTABLISHMENT OF POLICY.—The Secretary
2 shall have the responsibility to establish policy for the dis-
3 charge of the counterintelligence programs and functions
4 consolidated within the National Nuclear Security Admin-
5 istration under subsection (a) as provided for under sec-
6 tion 213 of the Department of Energy Organization Act
7 (42 U.S.C. 7144).

8 (d) PRESERVATION OF COUNTERINTELLIGENCE CA-
9 PABILITY.—In consolidating counterintelligence programs
10 and functions within the National Nuclear Security Ad-
11 ministration under subsection (a), the Secretary shall en-
12 sure that the counterintelligence capabilities of the De-
13 partment of Energy and the National Nuclear Security
14 Administration are in no way degraded or compromised.

15 (e) REPORT ON EXERCISE OF AUTHORITY.—In the
16 event the Secretary exercises the authority in subsection
17 (a), the Secretary shall submit to the congressional de-
18 fense committees a report on the exercise of the authority.

19 The report shall include—

20 (1) a description of the manner in which the
21 counterintelligence programs and functions referred
22 to in subsection (b) shall be consolidated within the
23 Office of Defense Nuclear Counterintelligence of the
24 National Nuclear Security Administration and dis-
25 charged by that Office;

1 (2) a notice of the date on which that Office
2 shall commence the discharge of such programs and
3 functions, as so consolidated; and

4 (3) a proposal for such legislative action as the
5 Secretary considers appropriate to effectuate the dis-
6 charge of such programs and functions, as so con-
7 solidated, by that Office.

8 (f) DEADLINE FOR EXERCISE OF AUTHORITY.—The
9 authority in subsection (a) may be exercised, if at all, not
10 later than one year after the date of the enactment of this
11 Act.

12 **SEC. 3119. TREATMENT OF DISPOSITION WASTE FROM RE-**
13 **PROCESSING OF LOW-LEVEL OR TRANS-**
14 **URANIC WASTE.**

15 (a) IN GENERAL.—Subject to subsection (c) and ex-
16 cept as provided in subsection (d), of the amount author-
17 ized to be appropriated by section 3102(1) for defense en-
18 vironmental management for defense site acceleration
19 completion, a total of \$350,000,000 shall be available for
20 activities at each site referred to in subsection (b) to sta-
21 bilize, treat, or process for disposition waste from repro-
22 cessing of low-level or transuranic waste.

23 (b) COVERED SITES.—The sites referred to in this
24 subsection are as follows:

1 (1) The Idaho National Engineering and Envi-
2 ronmental Laboratory, Idaho.

3 (2) The Savannah River Site, Aiken, South
4 Carolina.

5 (3) The Hanford Site, Richland, Washington.

6 (c) LIMITATION.—Amounts referred to in subsection
7 (a) shall be available for activities described in that sub-
8 section at a site referred to in subsection (b) only if the
9 Secretary of Energy certifies to the President and Con-
10 gress that there is adequate certainty of the legality of
11 the disposition pathway contemplated by such activities at
12 such site as to warrant proceeding with such activities at
13 such site.

14 (d) DEADLINE.—If the Secretary has not made a cer-
15 tification described in subsection (c) regarding activities
16 described in subsection (a) at a site referred to in sub-
17 section (b) as of June 1, 2005, any funds referred to in
18 subsection (a) that would otherwise be available for such
19 activities shall no longer be available to the Department
20 of Energy for any purpose as of that date.

21 **SEC. 3120. LOCAL STAKEHOLDER ORGANIZATIONS FOR DE-**
22 **PARTMENT OF ENERGY ENVIRONMENTAL**
23 **MANAGEMENT 2006 CLOSURE SITES.**

24 (a) ESTABLISHMENT.—(1) The Secretary of Energy
25 shall establish for each Department of Energy Environ-

1 mental Management 2006 closure site a local stakeholder
2 organization having the responsibilities set forth in sub-
3 section (c).

4 (2) The local stakeholder organization shall be estab-
5 lished in consultation with interested elected officials of
6 local governments in the vicinity of the closure site con-
7 cerned.

8 (b) COMPOSITION.—A local stakeholder organization
9 for a Department of Energy Environmental Management
10 2006 closure site under subsection (a) shall be composed
11 of such officers and employees of the Department of En-
12 ergy at the closure site as the Secretary considers appro-
13 priate to carry out the responsibilities set forth in sub-
14 section (c).

15 (c) RESPONSIBILITIES.—A local stakeholder organi-
16 zation for a Department of Energy Environmental Man-
17 agement 2006 closure site under subsection (a) shall—

18 (1) solicit and encourage public participation in
19 appropriate activities relating to the closure of the
20 site;

21 (2) disseminate information on the closure of
22 the site to the State government of the State in
23 which the site is located, local and Tribal govern-
24 ments in the vicinity of the site, and persons and en-
25 tities having a stake in the closure of the site; and

1 (b) ELEMENTS.—The report under subsection (a)
2 shall include the following:

3 (1) The number of workers at Department of
4 Energy 2006 closure sites that could lose retirement
5 benefits as a result of the early closure of such a
6 site.

7 (2) The impact on collective bargaining agree-
8 ments with workers at Department of Energy 2006
9 closure sites of the loss of their retirement benefits
10 as described in paragraph (1).

11 (3) The cost of providing retirement benefits,
12 after the closure of Department of Energy 2006 clo-
13 sure sites, to workers at such sites who would other-
14 wise lose their benefits as described in paragraph (1)
15 after the closure of such sites.

16 (c) TRANSMITTAL TO CONGRESS.—Not later than 30
17 days after receiving the report under subsection (a), the
18 Secretary shall transmit the report to Congress, together
19 with such recommendations, including recommendations
20 for legislative action, as the Secretary considers appro-
21 priate.

22 (d) DEFINITIONS.—In this section:

23 (1) The term “Department of Energy 2006 clo-
24 sure site” means the following:

1 (A) The Rocky Flats Environmental Tech-
2 nology Site, Colorado.

3 (B) The Fernald Plant, Ohio.

4 (C) The Mound Plant, Ohio.

5 (2) The term “worker” means any employee
6 who is employed by contract to perform cleanup, se-
7 curity, or administrative duties or responsibilities at
8 a Department of Energy 2006 closure site.

9 (3) The term “retirement benefits” means
10 health, pension, and any other retirement benefits.

11 **Subtitle C—Proliferation Matters**

12 **SEC. 3131. MODIFICATION OF AUTHORITY TO USE INTER-** 13 **NATIONAL NUCLEAR MATERIALS PROTEC-** 14 **TION AND COOPERATION PROGRAM FUNDS** 15 **OUTSIDE THE FORMER SOVIET UNION.**

16 (a) **APPLICABILITY OF AUTHORITY LIMITED TO**
17 **PROJECTS NOT PREVIOUSLY AUTHORIZED.**—Subsection
18 (a) of section 3124 of the National Defense Authorization
19 Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat.
20 1747) is amended by inserting “that has not previously
21 been authorized by Congress” after “states of the former
22 Soviet Union”.

23 (b) **REPEAL OF LIMITATION ON TOTAL AMOUNT OF**
24 **OBLIGATION.**—Such section is further amended—

25 (1) by striking subsection (c); and

1 (2) by redesignating subsections (d), (e), and
2 (f) as subsections (c), (d), and (e), respectively.

3 **Subtitle D—Other Matters**

4 **SEC. 3141. INDEMNIFICATION OF DEPARTMENT OF ENERGY** 5 **CONTRACTORS.**

6 Section 170 d.(1)(A) of the Atomic Energy Act of
7 1954 (42 U.S.C. 2210(d)(1)(A)) is amended by striking
8 “until December 31, 2004” and inserting “until December
9 31, 2006”.

10 **SEC. 3142. TWO-YEAR EXTENSION OF AUTHORITY FOR AP-** 11 **POINTMENT OF CERTAIN SCIENTIFIC, ENGI-** 12 **NEERING, AND TECHNICAL PERSONNEL.**

13 Section 4601(c)(1) of the Atomic Energy Defense Act
14 (50 U.S.C. 2701(c)(1)) is amended by striking “Sep-

15 tember 30, 2004” and inserting “September 30, 2006”.

16 **SEC. 3143. ENHANCEMENT OF ENERGY EMPLOYEES OCCU-** 17 **PATIONAL ILLNESS COMPENSATION PRO-** 18 **GRAM AUTHORITIES.**

19 (a) STATE AGREEMENTS.—Section 3661 of the Floyd
20 D. Spence National Defense Authorization Act for Fiscal
21 Year 2001 (as enacted into law by Public Law 106–394)
22 (42 U.S.C. 7385o) is amended—

23 (1) in subsection (b), by striking “Pursuant to
24 agreements under subsection (a), the” and inserting
25 “The”;

1 (2) in subsection (c), by striking “provided in
2 an agreement under subsection (a), and if”; and

3 (3) in subsection (e), by striking “If provided in
4 an agreement under subsection (a)” and inserting
5 “If a panel has reported a determination under sub-
6 section (d)(5)”.

7 (b) PHYSICIAN PANELS.—Subsection (d) of such sec-
8 tion is amended by striking paragraph (2) and inserting
9 the following new paragraph (2):

10 “(2) The Secretary of Health and Human Services
11 shall, in consultation with the Secretary of Energy, select
12 the individuals to serve as panel members based on experi-
13 ence and competency in diagnosing occupational illnesses.
14 The Secretary shall appoint the individuals so selected as
15 panel members or shall obtain by contract the services of
16 such individuals as panel members.”.

17 **SEC. 3144. SUPPORT FOR PUBLIC EDUCATION IN THE VI-**
18 **CINITY OF LOS ALAMOS NATIONAL LABORA-**
19 **TORY, NEW MEXICO.**

20 (a) SUPPORT THROUGH CURRENT MANAGEMENT
21 AND OPERATIONS CONTRACT.—The Secretary of Energy
22 shall modify applicable provisions of the current manage-
23 ment and operations contract for Los Alamos National
24 Laboratory, New Mexico, to require the contractor under
25 the contract to provide support to the Los Alamos Public

1 School District, New Mexico, for the elementary and sec-
2 ondary education of students by the School District in an
3 amount not to exceed \$8,000,000 in each fiscal year.

4 (b) SUPPORT THROUGH SUCCEEDING MANAGEMENT
5 AND OPERATIONS CONTRACTS.—The Secretary shall en-
6 sure that each management and operations contract for
7 Los Alamos National Laboratory that is entered into on
8 or after the date of the enactment of this Act contains
9 terms requiring the contractor under such contract to pro-
10 vide support to the Los Alamos Public School District for
11 the elementary and secondary education of students by the
12 School District in an amount specified by the Secretary
13 in such contract that is appropriate for purposes of this
14 section.

15 **SEC. 3145. REVIEW OF WASTE ISOLATION PILOT PLANT,**
16 **NEW MEXICO, PURSUANT TO COMPETITIVE**
17 **CONTRACT.**

18 (a) CONTRACT REQUIREMENT.—The Secretary of
19 Energy shall use competitive procedures to enter into a
20 contract to conduct independent reviews and evaluations
21 of the design, construction, and operations of the Waste
22 Isolation Pilot Plant in New Mexico (hereafter in this sec-
23 tion referred as the “WIPP”) as they relate to the protec-
24 tion of the public health and safety and the environment.
25 The contract shall be for a period of one year, beginning

1 on October 1, 2004, and shall be renewable for four addi-
2 tional one-year periods with the consent of the contractor
3 and subject to the authorization and appropriation of
4 funds for such purpose.

5 (b) CONTENT OF CONTRACT.—A contract entered
6 into under subsection (a) shall require the following:

7 (1) The contractor shall appoint a Director and
8 Deputy Director, who shall be scientists of national
9 eminence in the field of nuclear waste disposal, shall
10 be free from any biases related to the activities of
11 the WIPP, and shall be widely known for their in-
12 tegrity and scientific expertise.

13 (2) The Director shall appoint staff. The pro-
14 fessional staff shall consist of scientists and engi-
15 neers of recognized integrity and scientific expertise
16 who represent scientific and engineering disciplines
17 needed for a thorough review of the WIPP, including
18 disciplines such as geology, hydrology, health phys-
19 ics, environmental engineering, probability risk anal-
20 ysis, mining engineering, and radiation chemistry.
21 The disciplines represented in the staff shall change
22 as may be necessary to meet changed needs in car-
23 rying out the contract for expertise in any certain
24 scientific or engineering discipline. Scientists em-
25 ployed under the contract shall have qualifications

1 and experience equivalent to the qualifications and
2 experience required for scientists employed by the
3 Federal Government in grades GS-13 through GS-
4 15.

5 (3) Scientists employed under the contract shall
6 have an appropriate support staff.

7 (4) The Director and Deputy Director shall
8 each be appointed for a term of 5 years, subject to
9 contract renewal, and may be removed only for mis-
10 conduct or incompetence. The staff shall be ap-
11 pointed for such terms as the Director considers ap-
12 propriate.

13 (5) The rates of pay of professional staff and
14 the procedures for increasing the rates of pay of pro-
15 fessional staff shall be equivalent to those rates and
16 procedures provided for the General Schedule pay
17 system under chapter 53 of title 5, United States
18 Code.

19 (6) The results of reviews and evaluations car-
20 ried out under the contract shall be published.

21 (c) ADMINISTRATION.—The contractor shall establish
22 general policies and guidelines to be used by the Director
23 in carrying out the work under the contract.

1 **SEC. 3146. COMPENSATION OF PAJARITO PLATEAU, NEW**
2 **MEXICO, HOMESTEADERS FOR ACQUISITION**
3 **OF LANDS FOR MANHATTAN PROJECT IN**
4 **WORLD WAR II.**

5 (a) **ESTABLISHMENT OF COMPENSATION FUND.—**

6 There is established in the Treasury of the United States
7 a fund to be known as the Pajarito Plateau Homesteaders
8 Compensation Fund (in this section referred to as the
9 “Fund”). The Fund shall be dedicated to the settlement
10 of the two lawsuits in the United States District Court
11 for the District of New Mexico consolidated as Civ. No.
12 00–60.

13 (b) **ELEMENTS OF FUND.—**The Fund shall consist
14 of the following:

15 (1) Amounts available for deposit in the Fund
16 under subsection (j).

17 (2) Interest earned on amounts in the Fund
18 under subsection (g).

19 (c) **USE OF FUND.—**The Fund shall be available for
20 the settlement of the consolidated lawsuits in accordance
21 with the following requirements:

22 (1) The settlement shall be subject to prelimi-
23 nary and final approval by the Court in accordance
24 with rule 23(e) of the Federal Rules of Civil Proce-
25 dure.

1 (2) Lead Counsel and Counsel for the United
2 States of America shall recommend to the Court rea-
3 sonable procedures by which the claims for monies
4 from the Fund shall be administered, which rec-
5 ommendations shall include mechanisms—

6 (A) to identify class members;

7 (B) to receive claims from class members
8 so identified;

9 (C) to determine in accordance with sub-
10 section (d) eligible claimants from among class
11 members submitting claims; and

12 (D) to resolve contests, if any, among eligi-
13 ble claimants with respect to a particular eligi-
14 ble tract regarding the disbursement of monies
15 in the Fund with respect to such eligible tract.

16 (3) Lead Counsel and Counsel for the United
17 States of America shall provide evidence to the
18 Court to assist the Court in—

19 (A) identifying each class member by name
20 and whereabouts;

21 (B) providing notice of the settlement
22 process for the consolidated lawsuits to each
23 class member so identified; and

1 (C) providing the forms, and describing the
2 procedure, for making claims to each class
3 member so identified.

4 (4) After the provision of notice to class mem-
5 bers under paragraph (3), if, within a time period to
6 be established by the Court, more than 10 percent
7 of the class members submit to the Court written
8 notice of their determination to be excluded from
9 participation in the settlement of the consolidated
10 lawsuits—

11 (A) the Fund shall not serve as the basis
12 for the settlement of the consolidated lawsuits
13 and the provisions of this section shall have no
14 further force or effect; and

15 (B) amounts in the Fund shall not be dis-
16 bursed, but shall be retained in the Treasury as
17 miscellaneous receipts.

18 (5) The Court may award attorney fees and ex-
19 penses from the Fund pursuant to rule 23 of the
20 Federal Rules of Civil Procedure, except that the
21 award of attorney fees may not exceed 20 percent of
22 the Fund and the award of expenses may not exceed
23 2 percent of the Fund. Any attorney fees and ex-
24 penses so paid shall be paid from the Fund before

1 distribution of the amount in the Fund to eligible
2 claimants entitled thereto.

3 (6) The Fund shall be available to pay settle-
4 ment awards in accordance with the following:

5 (A) The balance of the amount of the
6 Fund that is available for disbursement after
7 any award of attorney fees and expenses under
8 paragraph (5) shall be allocated proportionally
9 by eligible tract according to its acreage as
10 compared with all eligible tracts.

11 (B) The allocation for each eligible tract
12 shall be allocated pro rata among all eligible
13 claimants having an interest in such eligible
14 tract according to the extent of their interest in
15 such eligible tract, as determined under the
16 laws of the State of New Mexico.

17 (C) Payments from the Fund under this
18 paragraph shall be made by the Secretary of
19 the Treasury.

20 (7) Any amounts available for disbursement
21 with respect to an eligible tract that are not awarded
22 to eligible claimants with respect to that tract by
23 reason of paragraph (6)(B) shall be retained in the
24 Treasury as miscellaneous receipts.

1 (d) ELIGIBLE CLAIMANTS.—(1) For purposes of this
2 section, an eligible claimant is any class member deter-
3 mined by the Court, by a preponderance of evidence and
4 pursuant to procedures established under subsection
5 (c)(2), to be a person or entity who held a fee simple own-
6 ership in an eligible tract at the time of its acquisition
7 by the United States during World War II for use in the
8 Manhattan Project, or the heir, successor in interest, as-
9 signee, or beneficiary of such a person or entity.

10 (2) The status of a person or entity as an heir, suc-
11 cessor in interest, assignee, or beneficiary for purposes of
12 this subsection shall be determined under the laws of the
13 State of New Mexico, including the descent and distribu-
14 tion law of the State of New Mexico.

15 (e) FULL RESOLUTION OF CLAIMS AGAINST UNITED
16 STATES.—(1) The acceptance of a disbursement from the
17 Fund by an eligible claimant under this section shall con-
18 stitute a final and complete release of the defendants in
19 the consolidated lawsuits with respect to such eligible
20 claimant, and shall be in full satisfaction of any and all
21 claims of such eligible claimant against the United States
22 arising out of acts described in the consolidated lawsuits.

23 (2) Upon the disbursement of the amount in the
24 Fund to eligible claimants entitled thereto under this sec-
25 tion, the Court shall, subject to the provisions of rule 23(e)

1 of the Federal Rules of Civil Procedure, enter a final judg-
2 ment dismissing with prejudice the consolidated lawsuits
3 and all claims and potential claims on matters covered by
4 the consolidated lawsuits.

5 (f) COMPENSATION LIMITED TO AMOUNTS IN
6 FUND.—(1) An eligible claimant may be paid under this
7 section only from amounts in the Fund.

8 (2) Nothing in this section shall authorize the pay-
9 ment to a class member by the United States Government
10 of any amount authorized by this section from any source
11 other than the Fund.

12 (g) INVESTMENT OF FUND.—(1) The Secretary of
13 the Treasury shall, in accordance with the requirements
14 of section 9702 of title 31, United States Code, and the
15 provisions of this subsection, direct the form and manner
16 by which the Fund shall be safeguarded and invested so
17 as to maximize its safety while earning a return com-
18 parable to other common funds in which the United States
19 Treasury is the source of payment.

20 (2) Interest on the amount deposited in the Fund
21 shall accrue from the date of the enactment of the Act
22 appropriating amounts for deposit in the Fund until the
23 date on which the Secretary of the Treasury disburses the
24 amount in the Fund to eligible claimants who are entitled
25 thereto under subsection (c).

1 (h) PRESERVATION OF RECORDS.—(1) All docu-
2 ments, personal testimony, and other records created or
3 received by the Court in the consolidated lawsuits shall
4 be kept and maintained by the Archivist of the United
5 States, who shall preserve such documents, testimony, and
6 records in the National Archives of the United States.

7 (2) The Archivist shall make available to the public
8 the materials kept and maintained under paragraph (1).

9 (i) DEFINITIONS.—In this section:

10 (1) The term “Court” means the United States
11 District Court for the District of New Mexico having
12 jurisdiction over the consolidated lawsuits.

13 (2) The term “consolidated lawsuits” means the
14 two lawsuits in the United States District Court for
15 the District of New Mexico consolidated as Civ. No.
16 00–60.

17 (3)(A) The term “eligible tract” means private
18 real property located on the Pajarito Plateau of
19 what is now Los Alamos County, New Mexico, that
20 was acquired by the United States during World
21 War II for use in the Manhattan Project and which
22 is the subject of the consolidated lawsuits.

23 (B) The term does not include lands of the Los
24 Alamos Ranch School and of the A.M. Ross Estate
25 (doing business as Anchor Ranch).

1 (4) The term “class member” means the fol-
2 lowing:

3 (A) Any person or entity who claims to
4 have held a fee simple ownership in an eligible
5 tract at the time of its acquisition by the
6 United States during World War II for use in
7 the Manhattan Project.

8 (B) Any person or entity claiming to be
9 the heir, successor in interest, assignee, or ben-
10 eficiary of a person or entity who held a fee
11 simple ownership in an eligible tract at the time
12 of its acquisition by the United States during
13 World War II for use in the Manhattan Project.

14 (j) FUNDING.—Of the amount authorized to be ap-
15 propriated by section 3101(a)(4) for the National Nuclear
16 Security Administration for the Office of the Adminis-
17 trator for Nuclear Security, \$10,000,000 shall be available
18 for deposit in the Fund under subsection (b)(1).

19 **TITLE XXXII—DEFENSE NU-**
20 **CLEAR FACILITIES SAFETY**
21 **BOARD**

22 **SEC. 3201. AUTHORIZATION.**

23 There are authorized to be appropriated for fiscal
24 year 2005, \$21,268,000 for the operation of the Defense

1 Nuclear Facilities Safety Board under chapter 21 of the
2 Atomic Energy Act of 1954 (42 U.S.C. 2286 et seq.).

3 **TITLE XXXIII—NATIONAL**
4 **DEFENSE STOCKPILE**

5 **SEC. 3301. DISPOSAL OF FERROMANGANESE.**

6 (a) DISPOSAL AUTHORIZED.—The Secretary of De-
7 fense may dispose of up to 50,000 tons of ferromanganese
8 from the National Defense Stockpile during fiscal year
9 2005.

10 (b) CONTINGENT AUTHORITY FOR ADDITIONAL DIS-
11 POSAL.—After the disposal of ferromanganese authorized
12 by subsection (a)—

13 (1) the Secretary may dispose of up to an addi-
14 tional 25,000 tons of ferromanganese from the Na-
15 tional Defense Stockpile before September 30, 2005;
16 and

17 (2) if the Secretary completes the disposal au-
18 thorized by paragraph (1) before September 30,
19 2005, the Secretary may dispose of up to an addi-
20 tional 25,000 tons of ferromanganese from the Na-
21 tional Defense Stockpile before that date.

22 (c) CERTIFICATION.—The Secretary may dispose of
23 ferromanganese under paragraph (1) or (2) of subsection
24 (b) only if the Secretary, with the concurrence of the Sec-
25 retary of Commerce, certifies to the congressional defense

1 committees not later than 30 days before the commence-
2 ment of disposal under the applicable paragraph that—

3 (1) the disposal of ferromanganese under such
4 paragraph is in the national interest due to extraor-
5 dinary circumstances in markets for
6 ferromanganese;

7 (2) the disposal of ferromanganese under such
8 paragraph will not cause undue harm to domestic
9 manufacturers of ferroalloys; and

10 (3) the disposal of ferromanganese under such
11 paragraph is consistent with the requirements and
12 purpose of the National Defense Stockpile under the
13 Strategic and Critical Materials Stock Piling Act (50
14 U.S.C. 98 et seq.).

15 (d) DELEGATION OF RESPONSIBILITY.—The Sec-
16 retary of Defense and the Secretary of Commerce may
17 each delegate the responsibility of such Secretary under
18 subsection (c) to an appropriate official within the Depart-
19 ment of Defense or the Department of Commerce, as the
20 case may be.

21 (e) NATIONAL DEFENSE STOCKPILE DEFINED.—In
22 this section, the term “National Defense Stockpile” means
23 the stockpile provided for in section 4 of the Strategic and
24 Critical Materials Stock Piling Act (50 U.S.C. 98c).

1 **SEC. 3302. REVISIONS TO REQUIRED RECEIPT OBJECTIVES**
2 **FOR CERTAIN PREVIOUSLY AUTHORIZED DIS-**
3 **POSALS FROM THE NATIONAL DEFENSE**
4 **STOCKPILE.**

5 Section 3303(a) of the Strom Thurmond National
6 Defense Authorization Act for Fiscal Year 1999 (50
7 U.S.C. 98d note) is amended—

8 (1) in paragraph (4), by striking “and” at the
9 end;

10 (2) in paragraph (5), by striking the period at
11 the end and inserting “; and”; and

12 (3) by adding at the end the following new
13 paragraph:

14 “(6) \$870,000,000 by the end of fiscal year
15 2014.”.

Calendar No. 506

108TH CONGRESS
2^D SESSION

S. 2403

A BILL

To authorize appropriations for fiscal year 2005 for defense activities of the Department of Energy, and for other purposes.

MAY 11, 2004

Read twice and placed on the calendar